IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CASE NO.: **CWP No.624 of 1992**

DATE OF DECISION: December 6, 2006

JAGBIR SINGH ...PETITIONER

VERSUS

THE FINANCIAL COMMISSIONER, HARYANA, CHANDIGARH AND OTHERS ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE ASHUTOSH MOHUNTA.

PRESENT: MR. R.K. GUPTA, ADVOCATE FOR THE PETITIONER.

MR. R.S. KUNDU, ADDL.A.G., HARYANA
WITH MR. PUNEET GUPTA, ADVOCATE
FOR RESPONDENT NOS.1 & 2.

ASHUTOSH MOHUNTA, J.

The prayer made in this petition under Articles 226/227 of the Constitution of India for the issuance of a writ in the nature of certiorari quashing the order dated 4.9.1991 (Annexure P-4) passed by the Financial Commissioner (respondent No.1) in R.O.R. No.55 of 1990-91 whereby the revision petition filed by respondent No.3 has been accepted and the confirmation of the sale by auction proceedings by the Commissioner, Hisar Division, after dismissing the objections filed by Ram Dhari (respondent No.3) vide order dated 27.6.1990 (Annexure P-2), has been set aside by the Financial Commissioner (respondent No.1).

The undisputed facts of the case are that Ram Dhari (now deceased and represented by the legal heirs) had raised a loan from the Haryana Financial Corporation and installed a cotton ginning factory by the

name and style of M/s Raj Cotton and Ginning Industries, Hisar. On his failure to repay the loan amount, proceedings for the recovery of Rs.2,23,661.86 paise were initiated against him on 30.8.1984, under the provisions of Haryana Public Monies Recovery Act, 1979. The certificate of recovery for the said amount was sent by the Collector, Chandigarh, to the Collector, Hisar for recovery of the amount as arrears of land revenue, who initiated the proceedings for the recovery of the amount by way of sale of mortgaged property measuring 6 kanals 17 marlas and the date for sale of the land was fixed as 11.1.1988. On initiation of the sale proceedings by auction, respondent No.3 approached the Collector, Hisar. He promised to repay and gave a written undertaking by way of an affidavit to pay the amount due against him in 3 installments of Rs.40,000/- on 18.1.1988; Rs.60,000/- on 15.2.1988 and the balance amount was to be paid by 31.3.1988. respondent No.3 did not honour the commitment made by him and did not pay any amount on 18.1.1988 and the Collector, Hisar finding no alternative issued proclamation for the sale of attached property on 18.1.1988, and the date of sale by auction was fixed as 22.2.1988. Accordingly, the property measuring 6 kanals 17 marlas belonging to respondent No.3 was put to auction on 22.2.1988, and the petitioner was the highest bidder for Rs.2,27,000/-. According to law he deposited one-fourth of the amount to the tune of Rs.57,000/- in the Treasury on 23.2.1988 and the balance amount of Rs.1,70,000/- was deposited by him in the Treasury on 7.3.1988 i.e., within the period allowed under Section 85 of the Punjab Land Revenue Act, 1885 (as applicable to the State of Haryana) (for short 'the Act'). Finding the sale of the property to be reasonable and according to law, the Collector, Hisar referred the case for confirmation of the sale to the

Commissioner, Hisar Division. Respondent No.3 filed objections against the sale of his property before the Commissioner and simultaneously filed a civil suit in October, 1988 in the Court of Sub Judge Ist Class, Hisar, praying for restraining the Commissioner, Hisar Division from confirming the ale of his property. The suit was dismissed by the Sub Judge and the ad interim injunction earlier granted by him was vacated on 31.3.1989. the appeal filed by respondent No.3 was dismissed by the Additional District Judge, Hisar vide order dated 6.4.1990 (Annexure P-1). Civil Revision Petition No.1128 of 1990 filed by him against the order of the Additional District Judge was dismissed by the High Court vide order dated 1.2.1991. Even the Special Leave Petition No.3674 of 1991 filed by respondent No.3 against the order of the High Court was dismissed by Hon'ble the Supreme Court. In the meantime, the Commissioner, Hisar Division dismissed the objections filed by respondent No.3 and confirmed the sale of the land in dispute vide order dated 27.6.1990 (Annexure P-2) under Section 92 of the Act. Against the said order passed by the Commissioner, respondent No.3 filed R.O.R. No.55 of 1990-91 before the Financial Commissioner, Haryana who after hearing the counsel for the parties, vide the impugned order dated 4.9.1991 (Annexure P-4) allowed the revision petition filed by respondent No.3 and set aside the order dated 27.6.1990 (Annexure P-2) passed by the Commissioner, Hisar Division.

The writ petition has primarily been contested by respondent No.3 who filed a detailed written statement in order to controvert the allegations made in the petition. The preliminary objections raised in the written statement is that against the certificate of recovery of an amount of Rs.2,23,661.86/ issued by the Haryana Financial Corporation on 30.8.1984,

respondent No.3 had deposited an amount of Rs.3,36,000/- and the petitioner had no concern therewith. However, the factual position, as stated above, has more or less been admitted in the written statement. The case of the petitioner has been supported by the State as well as by the Haryana Financial Corporation.

It has been contended by the learned counsel for the petitioner that under the Act the Financial Commissioner was not authorized to set aside the order of confirmation passed by the Commissioner. Another contention raised by him is that respondent No.3 had been pursuing two remedies before the Civil Courts and the Revenue Courts simultaneously. The contentions raised on behalf of the petitioner have vehemently been controverted by the learned counsel appearing on behalf of respondent No.3.

I have heard the learned counsel for the parties and examined the case file meticulously.

There is no dispute to the fact that respondent No.3 had raised loan from the Haryana Financial Corporation and the recovery certificate for the amount of Rs.2,23,661.86 was issued against him as back as on 30.8.1984. When he failed to make any payment, the Collector, Hisar initiated proceedings for sale of the mortgaged property and the date for sale was fixed as 11.1.1988, i.e., after more than four years of the recovery certificate issued by the Haryana Financial Corporation. Thereafter, respondent No.3 made a commitment by way of an undertaking before the Collector that he would repay the amount by way of three installments, i.e., Rs.40,000/- on 18.1.1988; Rs.60,000/- on 15.2.1988 and rest of the amount was to be paid by 31.3.1988. When respondent No.3 did not pay any

amount on 18.1.1988, as per his written undertaking, the Collector on the same day ordered the sale of the attached property by way of open auction to be conducted on 22.2.1988. Consequently, the petitioner purchased the property measuring 6 kanals 17 marlas being the highest bidder of Rs.2,27,000/-. As per the terms and conditions of sale, he deposited one-fourth of the total auction money to the tune of Rs.57,000/- in the Treasury on the very next day i.e. 23.2.1988, and the rest of the amount to the tune of Rs.1,70,000/- was deposited by him in the Treasury on 7.3.1988, within the period of limitation provided under Section 85 of the Act. The objections filed by respondent No.3 were rejected and the sale of the land in favour of the petitioner was confirmed by the Commissioner on 27.6.1990.

It is the case of respondent No.3 that he had deposited Rs.1,00,000/- on 22.2.1988, i.e., on the day of auction proceedings were conducted and in spite of this the Collector continued to conduct the auction proceedings. The contention raised on behalf of respondent No.3 is without any merit. The conduct of respondent No.3 shows that he remained a defaulter throughout. The recovery certificate against him was issued by the Haryana Financial Corporation on 30.8.1984. Despite the recovery certificate having been issued against him, he did not make any payment of the loan amount. When the auction proceedings were fixed for 11.1.1988, he approached the Collector and gave an undertaking to the effect that he would pay the amount of Rs.,40,000/- on 18.1.1988 and Rs.60,000/- on 15.2.1988 and the rest of the amount he undertook to pay by 31.3.1988. When respondent No.3 did not make any payment on 18.1.1988, as per his commitment, the Collector ordered the sale of his property by way of auction to be conducted on 22.2.1988. Respondent No.3 kept mum for

more than a month and on the day when the auction was to be conducted, he deposited the amount of Rs.1,00,000/-. It shows that respondent No.3 never honoured the commitments made by him and always kept the authorities concerned in lurch. When the sale proceedings were finalized, the Collector referred the case for confirmation of the sale to the Commissioner. Respondent No.3 filed objections against the sale of his property before the Commissioner and simultaneously he filed a civil suit in the Court of Sub Judge Ist Class, Hisar. The suit filed by respondent No.3 was dismissed by the trial Court on 31.3.1989. The appeal against the order of the trial Court was dismissed by the Additional District Judge vide order dated 6.4.1990. The High Court also dismissed Civil Revision No.1128 of 1990 filed by respondent No.3 vide order dated 1.2.1990. Thereafter, S.L.P. No.3674 of 1991 filed by him was rejected by Hon'ble the Supreme Court. In spite of the rejection of litigation initiated at the instance of respondent No.3 at every stage upto the level of Supreme Court, he simultaneously continued the litigation on the same point before the Revenue Courts. When the Commissioner had rejected the objections filed by respondent No.3 and confirmed the sale of his property in favour of the petitioner vide order dated 27.6.1990, he also filed revision petition before the Financial Commissioner, who accepted the same vide order dated 4.9.1991 (Annexure P-4), in spite of the fact that respondent No.3 had already lost his case upto the level of Supreme Court. It shows that respondent No.3 had never pursued his remedy with clean hands.

Not only this, as per law no revision petition could be filed before the Financial Commissioner against the confirmation of sale by the Commissioner. The relevant Section 92 of the Act is reproduced hereunder

for the sake of facility:-

> "*92.* ***Order confirming or setting aside sale:***
>
> ***(1)*** *After expiration of thirty days form the date of sale, if such application as is mentioned in the last foregoing section has not been made, or if such application has been made and rejected, the Commissioner shall made an order confirming the sale, and, if such application has been made and allowed, the Commissioner shall make the order setting aside the sale.*
>
> ***(2)*** *An order made under this section shall be final."*

A perusal of the afore quoted Section 92 of the Act makes it abundantly clear that with the confirmation of the sale by the Commissioner, the sale of the land in favour of the petitioner had attained finality and no revision petition was competent before the Financial Commissioner, who passed the impugned order without any jurisdiction.

In *Haryana Financial Corporation and another* vs. *Jagdamba Oil Mills and another* reported as (2002) 3 SCC 496, the Hon'ble Supreme Court has held that "*there is no justification for showing indulgence to a chronic defaulter. Decision taken by State Financial Corporation with the intention of recovering what is due to it is not open to challenge, unless such decision is mala fide*". In the present case, the Financial Corporation had taken a decision to put the property belonging to respondent No.3 for auction as he was a chronic defaulter. He had not repaid the amount taken by him as loan.

Consequently, I allow the writ petition and set aside the

impugned order dated 4.9.1991(Annexure P-4) passed by the Financial Commissioner, Haryana. The order passed by the Commissioner confirming the sale in favour of Jagbir Singh petition stands restored. As respondent No.3 (Ram Dhari) has since died and his legal representatives have been brought on record, I do not make any order as to costs.

December 6, 2006 **(ASHUTOSH MOHUNTA)**
Gulati **JUDGE**